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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

STEVEN WHITE, KIRK SCOTT, JIM
TROTTER, KEVIN WATT, ROBERT
SIEVERS, DAVE MORRIS, and BURRELL
WALLEN individually and on behalf of other
similarly situated,

Plaintiffs,

vs.

RAKHRA MUSHROOM FARM CORP., dba
OREGON TRAIL MUSHROOM, an Oregon
corporation; TREASURE VALLEY
MUSHROOM COMPANY, OREG. LTD., a
domestic limited partnership; BALJIT SINGH
NANDA, an individual.

Defendants.

NO. CV'08-0198-SU

AMENDED COMPLAINT
Fair Labor Standards Act
Representative Action (29 U.S.C. § 201
et seq.)
Oregon Wage Claim Class Action (ORS
653.055 and 653.261)

JURY TRIAL DEMANDED

Preliminary Statement

This is a claim for overtime wages brought under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* (“FLSA”) with pendent state claims for overtime and penalty damages for violation of Oregon statutes (ORS 653.055 and 653.261). Plaintiffs were employees of Rakhra Mushroom Farm Corp. (“Rakhra”) which owned and operated three sites in and around Vale, Oregon. The three sites were Oregon Trail Mushroom (“OTM”), Treasure Valley Mushroom Company (“TVM”), and a mix site which was located a few miles outside of town. Rakhra is in the business of growing mushrooms. Mushrooms grown at OTM and TVM are “under cover” crops, i.e., the mushrooms are grown indoors, all year around, and are not weather or conditions dependent. The crops are not seasonal. Therefore, everyone is employed all year, continually producing mushrooms. The majority of Rakhra’s employees worked at OTM, which is where all of the mushrooms are grown, harvested and packaged except for the portabella mushrooms, which are grown at TVM. Plaintiffs worked numerous overtime hours at both OTM and TVM, averaging about 45-90 hours per week, yet were paid only straight time for their work. When plaintiffs were hired by Rakhra, they were told by the personnel manager that they were “farm workers” and thus exempt from the overtime laws. Plaintiffs were not exempt from maximum hour requirements of 29 U.S.C. § 213 and were thus entitled to their overtime pay. Almost all employees were laid off from Rakhra during the last couple of months of 2007, with the majority of employees being laid off on December 7, 2007.

Jurisdiction

1. The court has jurisdiction for overtime wage claims under the FLSA, 29 U.S.C. § 216(b).
2. The court has pendent jurisdiction under 28 U.S.C. § 1337 over the Oregon state claims because these claims arise out of the same common nucleus of facts which support the federal claims.
3. Plaintiffs earned, and defendants failed to pay, wages in the State of Oregon.

Parties

4. Plaintiff Steve White started working for Rakhra on February 6, 2007 as a dump truck driver, and worked continuously until his employment terminated on or about November 30, 2007. He began working at \$12.00 per hour, and his rate of pay at termination was \$13.00 per hour. During his employment, he regularly worked overtime. He typically worked about 55 hours per week. He never received overtime pay from defendants.
5. Plaintiff Kirk Scott worked for Rakhra for about 23 months, as part of the maintenance crew, and worked continuously until his employment terminated on or about December 21, 2007. His rate of pay was \$14 per hour. During his employment, he regularly worked overtime. He typically worked about 50 hours per week. He never received overtime pay from defendants.
6. Plaintiff Jim Trotter worked for Rakhra for about 21 months as a mechanic/welder for the maintenance crew, and worked continuously until his employment terminated on or about December 7, 2007. His rate of pay was \$12.50 per hour. During his employment, he regularly worked overtime. He typically worked about 50 hours per week. He never received overtime pay from defendants.

7. Plaintiff Kevin Watt worked for Rakhra for about two years as an electrician for maintenance crew, and worked continuously until his employment terminated on or about December 7, 2007. His rate of pay was \$14 per hour. During his employment, he regularly worked overtime. He typically worked about 45 to 50 hours per week. He never received overtime pay from defendants.

8. Plaintiff Robert Sievers began working for Rakhra in March of 2005 as an electrician. He was laid off in December, 2005, rehired in June 2006, and then laid off in July 2007. During March 2005 through December 2005, his rate of pay was \$15 per hour. From June 2006 through July 2007 his rate of pay was \$18 per hour. During his employment, he regularly worked overtime. He typically worked from 45-55 hours per week. He never received overtime pay from defendants.

9. Plaintiff Dave Morris worked for Rakhra for several years as part of the maintenance crew. He was laid off in July 2007. His rate of pay was \$15.00 per hour. During his employment, he regularly worked overtime. On some days he would work 21 hours in a day. Many weeks, he would work as much as 80 to 90 hours per week. He never received overtime pay from defendants.

10. Plaintiff Burrell Wallen began working for Rakhra in June 2005 as an electrician. He was laid off in November 2007. His rate of pay was \$18.00 per hour. During his employment, he regularly worked overtime. He typically worked 45 to 96 hours per week. He never received overtime pay from defendants.

11. Named plaintiffs at all material times are or have been employees of Rakhra, or were assigned to work by Rakhra. They are the named plaintiffs for the representative action

under the FLSA and class representatives for the class action claim under the Oregon overtime wage statutes and regulations.

12. Rakhra Mushroom Farm Corp. (“Rakhra”) dba Oregon Trail Mushroom (“OTM”) is an Oregon corporation with its principal place of business located at 1000 Washington Street East, Vale, Oregon 97918.

13. Treasure Valley Mushroom Farm, Oreg. Ltd., (“TVM”) is an inactive Oregon limited partnership with its principal place of business in Vale, Oregon. Upon information and belief, all employees at TVM were employees of Rakhra.

14. Baljit Singh Nanda (“Nanda”) is an individual. Upon information and belief, Nanda is the majority owner and president of Rakhra, and made all personnel decisions, including the decision to not pay overtime to Rakhra’s employees.

FLSA Representative Action

15. Plaintiffs bring this action as a representative suit under FLSA 29 U.S.C. § 216(b) to obtain overtime pay and liquidated damages on behalf of all employees of Rakhra who have worked more than forty hours in any given work week without receiving overtime wages.

Class Action

16. Plaintiffs seek certification under Federal Rule of Civil Procedure, Rule 23(b)(3) of their right to bring this class action comprised of all present and former employees of Rakhra who qualified for overtime wages and who did not receive payment of overtime wages. Plaintiffs seek monetary damages pursuant to Oregon wage law (ORS 653.055 and 653.261) for themselves and members of the class they represent.

17. The number of persons in the class is known only to defendants. However, on information currently available to plaintiffs, they believe that as many as 130 or more former employees are in the potential class. The number of individuals within the proposed class is large enough to make joinder of all members impractical.

18. There are questions of law and fact common to the members of the class which predominate over questions affecting individual members. All class members were employees of Rakhra, subject to the same company rules and regulations, whose paychecks are computed using the same bookkeeping system and personnel. The only individualized difference known to plaintiffs in each class member's claim is the computation of the rate of pay and actual hours worked by each class member.

19. The claims of the named plaintiffs are typical of the class.

20. The named plaintiffs will fairly and adequately protect the interests of the other members of the class.

21. Counsel for plaintiffs are experienced in representing persons in federal class action litigation and will adequately represent the interests of class members.

Facts

22. Rakhra is in the business of growing mushrooms at OTM and TVM, both located in Vale, Oregon. The mushrooms are "under cover" crops which means that they are grown indoors, all year around, and are not weather or conditions dependent. The crops are not seasonal. Therefore, the employees work all year, continually producing mushrooms.

23. Upon information and belief, Rakhra employed over 100 people in Vale, Oregon at its three sites in Vale, Oregon until it began laying off its employees in November and December, 2007.

24. Approximately 80-90 people worked at OTM, 30-40 people worked at TVM, and two or three people worked at the mix site, where the mushroom compost is made. Many people who worked at OTM also worked at TVM if needed.

25. Upon information and belief, the majority of Rakhra's employees worked more than 40 hours per week, and up to 90 hours per week, but were only paid straight time for their overtime hours.

26. When plaintiffs were hired by Rakhra, they were told by the personnel manager that they were "farm workers" and thus exempt from the overtime laws.

27. Defendants wrongfully classified plaintiffs as agricultural workers in order to deprive plaintiffs of overtime wages to which they were entitled under federal and/or state law.

28. Plaintiffs were not exempt from maximum hour requirements of 29 U.S.C. § 213 and were thus entitled to their overtime pay.

29. Plaintiffs are entitled to overtime pay for their work in excess of 40 hours in any week. On information and belief, the members of the proposed class are each owed in the range of \$90 to \$375 per week for their uncompensated overtime hours.

30. To date, defendants have wilfully failed to pay the overtime wages due under federal and state law.

First Claim for Relief

(FLSA)

31. The FLSA, 29 U.S.C. § 201 *et seq.* at § 207 requires Rakhra to pay plaintiffs time and a half for time worked in excess of forty hours per week. Rakhra owes plaintiffs unpaid overtime wages and an amount equal to the unpaid wages as liquidated damages.

32. Plaintiffs have had to retain the services of attorneys to pursue their claims against defendants and are therefore entitled to recover their reasonable attorney fees pursuant to 29 U.S.C. § 216(b).

Second Claim for Relief

(ORS 652.150, ORS 653.055, and ORS 653.261)

33. Oregon law requires each employer to pay employees all wages due within a specified period of time or be liable for penalty wages set by ORS 652.150. Rakhra has not paid overtime wages due within that specified time period required by statute. Plaintiffs are entitled to overtime wages and penalty damages equal to thirty days wages.

34. Plaintiffs have had to retain the services of attorneys to pursue their claims against defendants and are therefore entitled to recover their reasonable attorney fees pursuant to ORS 653.055.

Wherefore, plaintiffs pray for relief as follows:

1. For an order allowing this action to proceed as a representative action and certify this case as a class action under Federal Rule of Civil Procedure 23;

2 . On the First Claim for Relief, for a judgment awarding each plaintiff and member of the class the amount due the plaintiff or class member as a result of Rakhra's failure to pay the federal overtime wages due and an equal amount in liquidated damages.

35. On the Second Claim for Relief, for a judgment awarding each plaintiff and member of the class overtime wages due and liquidated damages in an amount equal to thirty days wages pursuant to Oregon state law;

36. On both claims for relief, for a judgment awarding plaintiffs the cost of maintaining this suit, including their reasonable attorney fees pursuant to 29 U.S.C. § 216(b) and ORS 653.055; and

37. Grant such other relief as the court deems appropriate.

DATED this 8th day of April, 2008.

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CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of April, 2008, I served true copies of the foregoing AMENDED COMPLAINT on CM/ECF Registered Participants as reflected on the Notice of Electronic Filing:

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Dated: April 8, 2008.

/s Lynn S. Walsh

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